

REMARKS

Following entry of the foregoing amendments, claims 1 to 26, and 30 to 42 will be pending in this patent application. Claims 1 to 19 have been withdrawn from consideration as allegedly drawn to non-elected subject matter. Claims 20 to 26 have been amended, and claims 27 to 29 have been canceled, herein, without prejudice. New claims 30 to 42 have been added. Support for the amendments and new claims is found throughout the specification as originally filed, including, for example, paragraphs 49 to 51. The amendments and claims 30 to 42 therefore do not introduce new matter into the application.

Applicants acknowledge with appreciation the examiner's indication that claims 20, 21, 23, and 25 are allowable. Applicants respectfully request reconsideration of the rejections of record in view of the foregoing amendments and the following remarks.

Claim Objections

Claims 26 to 29 have been objected to for reciting kits that are allegedly drawn to non-elected methods of use. Without conceding the correctness of this objection, and to advance prosecution, claim 26 has been amended herein to delete the phrase "or the treatment of a condition associated with ocular neovascularization in a subject" and claims 27 to 29 have been canceled, obviating the objection. Applicants accordingly, respectfully, request withdrawal thereof.

Alleged Indefiniteness

Claims 22 and 24 have been rejected under 35 U.S.C. § 112, second paragraph as indefinite because the term "modification" and the phrase "comprises one or more D form amino acids," allegedly render the scope of the claims unclear. Applicants respectfully request reconsideration and withdrawal of this rejection because the scope of the claims as amended herein would be readily apparent to those skilled in the art when the claims are considered in light of the state of the art and the description provided in the specification.

"The test for definiteness is whether one skilled in the art would understand the bounds of the claim when read in light of the specification. If the claims read in light of the specification

reasonably apprise those skilled in the art of the scope of the invention, § 112 [second paragraph] demands no more.”¹ Definiteness of claim language must be analyzed, not in a vacuum, but in light of the content of the particular application disclosure, the teachings of the prior art, and the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.²

Without conceding the correctness of the present rejection for alleged indefiniteness, and to advance prosecution, claim 22 has been amended herein to recite that the peptide of claim 20 further comprises a modification selected from pegylation, biotinylation, acetylation, ubiquitination, amidation, a radiolabel, an Fc antibody, and one or more D form amino acids. Notably, the peptide modifications recited in claim 22 are well-known to those skilled in the art, as evidenced by the description of such modifications in the articles attached as Appendix A.³ In addition, such modifications are described in the specification as originally filed, particularly at paragraphs 49 to 51. Those skilled in the art would thus readily understand the meaning of the term “modification” and the phrase “comprises one or more D form amino acids,” as they are used in the claims as amended herein, when the claims are read in light of the description provided in the specification and viewed in light of the state of the art. The scope of the presently pending claims would thus be readily apparent to those skilled in the art, and the claims therefore meet the requirements of 35 U.S.C. § 112, second paragraph. Applicants accordingly, respectfully request withdrawal of the rejection.

¹ *Miles Laboratories, Inc. v. Shandon Inc.*, 997 F.2d 870, 875 (Fed. Cir. 1993).

² *In re Moore*, 439 F.2d 1232, 1235 (C.C.P.A. 1971).

³ Kaiser, P., *et al.*, *Genome Biology*, 6, 2005, 233; Reubi, J.C., *et al.*, *J. Nuclear Med.*, 2005, 46, 67S; Lindegren, S., *et al.*, *Bioconjugate Chem.*, 2002, 13, 502; Brinckerhoff, L.H., *et al.*, *Int. J. Cancer*, 1999, 83, 326; Vaccaro, C., *et al.*, *Nature Biotech.*, 2005, 23, 1283; Na, D.H., *et al.*, *Pharm. Res.*, 2005, 22, 743; Werle, M., *et al.*, *Amino Acids*, 2006, 30, 351, attached hereto as Appendix A.

DOCKET NO.: NIHA-0383
Application No.: 10/588,884
Office Action Dated: August 4, 2010

PATENT

Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the official action of record. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

Date: November 4, 2010

/Jane E. Inglese/
Jane E. Inglese, Ph.D.
Registration No. 48,444

Woodcock Washburn LLP
Cira Centre
2929 Arch Street, 12th Floor
Philadelphia, PA 19104-2891
Telephone: (215) 568-3100
Facsimile: (215) 568-3439